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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/977,644	11/24/1997	RALPH EMERSON	PROG.003.00U	3349

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DAVID J. BREZNER,  
FLEHR HOHBACH TEST ALBRITTON 7 herbert llp  
4 embarcadero center, suite 3400  
SAN FRANCISCO, CA 94111

[REDACTED] EXAMINER

LEVY, NEIL S

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1616

DATE MAILED: 05/05/2003

*Lg*

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER
29	

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

## ADVISORY ACTION

 THE PERIOD FOR RESPONSE:

- a)  is extended to run 2 months or continues to run \_\_\_\_\_ from the date of the final rejection notice of appeal  
b)  expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 4/23/03 has been considered with the following effect, but it is not deemed to place the application in condition for allowance.

1.  The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a.  There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.  
b.  They raise new issues that would require further consideration and/or search. (See Note).  
c.  They raise the issue of new matter. (See Note).  
d.  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

- e.  They present additional claims without cancelling a corresponding number of finally rejected claims.  
*new claim 21 may be subject to double patenting.*

NOTE *Claim 14X Amended is now broader and therefore any period of time is not seen as requiring any of the selected Amended claims. Thus, the application would most likely meet the criteria for support of the rejection of claim 7 under 113, it is not clear : 3*

2.  Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.  
*References are cited, but examiner does not find them in the file.*

3.  Upon the filing of an appeal, the proposed amendment  will be entered  will not be entered and the status of the claims will be as follows:

Claims allowed: 5,6,18

Claims objected to: 7,9,10,12-14

Claims rejected: 7,9,10,12-14

However;

Applicant's response has overcome the following rejection(s): Rejection of 1,4,5 under 112

4.  The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because *applicant's arguments are not persuasive. The claimed concept is again in the prior art, regardless of future prosecution since amendment was not entered.*
5.  The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.  
*no entered rejection of record are maintained under 35 USC 102 & for claim 7, 112.*
- The proposed drawing correction  has  has not been approved by the examiner. *7, 112*
- Other

NEIL S. LEVY  
PRIMARY EXAMINER